

House Bill 5EX

By: Representative Powell of the 171<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to ratify an executive order of the Governor suspending the collection of sales and use tax levied on jet fuel for a period of time; to provide for the continuance of such suspension of collection indefinitely; to exempt jet fuel from certain sales and use taxes; to provide a definition; to repeal provisions limiting an exemption from such taxes on the sale or use of jet fuel for certain qualifying airlines at certain qualifying airports; to repeal provisions relating to an expired exemption from a portion of state sales and use tax for certain qualifying airlines at certain qualifying airports; to repeal inapplicable definitions; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**PART I**  
**SECTION 1-1.**

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, is amended by adding a new Code section to read as follows:

"48-8-19.

(a) The General Assembly of Georgia hereby ratifies the Executive Order of the Governor dated July 30, 2018, and filed in the official records of the office of the Governor as Executive Order 07.30.18.01 which suspended the collection of any rate of sales and use tax as such tax applies to jet fuel. The General Assembly of Georgia hereby continues such suspension of collection indefinitely.

(b) For the time period commencing on August 1, 2018, as specified in the Executive Order of the Governor dated July 30, 2018, and filed in the official records of the office of the Governor as Executive Order 07.30.18.01, and concluding at the last moment of November 30, 2018, sales and use taxation pursuant to this chapter such tax applies to jet

fuel shall be governed by the provisions of this Code section notwithstanding any provisions of this chapter or any other law to the contrary.

(c) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section."

## PART II

### SECTION 2-1.

Said chapter is further amended in Code Section 48-8-2, relating to definitions, by adding a new paragraph to read as follows:

"(16.1) 'Jet fuel' means any form of fuel that is designed for or used in the operation of aircraft powered by jet turbine or turboprop engines, including but not limited to Jet-A, and excludes aviation gasoline designed for or used in piston engines, including but not limited to avgas."

### SECTION 2-2.

Said chapter is further amended in Code Section 48-8-3, relating to exemptions from state sales and use taxes, by revising paragraph (33.1) as follows:

~~"(33.1)(A) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport, to the extent provided in subparagraphs (B) and (C) of this paragraph:~~

~~(B) For the period of time beginning July 1, 2012, and ending on June 30, 2015, the sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from 1 percent of the 4 percent state sales and use tax:~~

~~(C) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt at all times from the sales or use tax levied and imposed as authorized pursuant to Part 1 of Article 3 of this chapter. As used in this subparagraph, the term 'qualifying airport' means any airport in this state that has had more than 750,000 takeoffs and landings during a calendar year, and the term 'qualifying airline' shall have the same meaning as set forth in subparagraph (E) of this paragraph.~~

~~(D) Except as provided for in subparagraph (C) of this paragraph, this exemption shall not apply to any other local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, not to exceed the rate at which such taxes were levied as of January 1, 2014, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' or such taxes as authorized by or pursuant to Part 2 of Article 3 or Article 2, 2A, or 4 of this chapter.~~

(E) For purposes of subparagraph (B) of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, a 'qualifying airline' shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire.

(F) For purposes of subparagraph (B) of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, the term 'qualifying airport' means a certificated air carrier airport in Georgia.

(G) On or after July 1, 2017, revenue derived from the levy of sales and use taxes on jet fuel shall be used for a state aviation program or airport related purposes to the extent required to comply with 49 U.S.C. Sections 47107(b) and 47113. Any portion of such revenue so derived which is in excess of the amount required for purposes of such compliance with federal law may be appropriated by the General Assembly for other purposes.

(H) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph Jet fuel except to the extent allowed pursuant to Code Section 48-8-3.5;"

### SECTION 2-3.

Said chapter is further amended by adding a new Code section to read as follows:

"48-8-3.5.

(a) The sale or use of jet fuel that is pumped into an aircraft in this state and the use of jet fuel that is pumped into an aircraft in another state shall be exempt from all sales and use taxes except sales and use taxes levied:

(1) By the state pursuant to Code Section 48-8-30;

(2) Pursuant to Article 2 of this chapter in the jurisdictions in which such tax was levied on jet fuel on December 30, 1987, provided that the rate shall not exceed the rate that was in effect on December 30, 1987; and

(3) Pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' in the jurisdictions in which such tax was levied on jet fuel on December 30, 1987, provided that the rate shall not exceed the rate that was in effect on December 30, 1987.

(b) To the extent required to comply with 49 U.S.C. Sections 47107(b) and 47113, revenue derived from the levy of sales and use taxes on jet fuel and other fuels sold or used at an airport for aviation purposes shall be used for a state aviation program or airport related purposes. Any portion of such revenue so derived which is not required or exceeds the

94 amount required for purposes of such compliance with federal law may be appropriated for  
95 other purposes as provided by law."

96 **SECTION 2-4.**

97 Said chapter is further amended by revising Code Section 48-8-6, relating to prohibition of  
98 political subdivisions from imposing various taxes, ceiling on local sales and use taxes, and  
99 taxation of mobile telecommunications, as follows:

100 "48-8-6.

101 (a) There shall not be imposed in any jurisdiction in this state or on any transaction in this  
102 state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent.  
103 For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and  
104 use tax which is levied in an area consisting of less than the entire state, however  
105 authorized, including such taxes authorized by or pursuant to constitutional amendment,  
106 except that the following taxes shall not count toward or be subject to such 2 percent  
107 limitation:

108 (1) A sales and use tax for educational purposes exempted from such limitation under  
109 Article VIII, Section VI, Paragraph IV of the Constitution;

110 (2) Any tax levied for purposes of a metropolitan area system of public transportation,  
111 as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page  
112 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d)  
113 of the Constitution; and the laws enacted pursuant to such constitutional amendment;  
114 provided, however, that the exception provided for under this paragraph shall only apply:

115 (A) In a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code  
116 Section 48-8-111 in whole or in part for the purpose or purposes of a water capital  
117 outlay project or projects, a sewer capital outlay project or projects, a water and sewer  
118 capital outlay project or projects, water and sewer projects and costs as defined under  
119 paragraph (4) of Code Section 48-8-200, or any combination thereof and with respect  
120 to which the county has entered into an intergovernmental contract with a municipality,  
121 in which the average waste-water system flow of such municipality is not less than 85  
122 million gallons per day, allocating proceeds to such municipality to be used solely for  
123 water and sewer projects and costs as defined under paragraph (4) of Code Section  
124 48-8-200. The exception provided for under this subparagraph shall apply only during  
125 the period the tax under such subparagraph (a)(1)(D) is in effect. The exception  
126 provided for under this subparagraph shall not apply in any county in which a tax is  
127 being imposed under Article 2A of this chapter;

(B) In a county in which the tax levied for purposes of a metropolitan area system of public transportation is first levied after January 1, 2010, and before November 1, 2016. Such tax shall not apply to the following:

~~(i) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport. For purposes of this division, a 'qualifying airline' means any person which is authorized by the Federal Aviation Administration or another appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. For purposes of this division, a 'qualifying airport' means any airport in this state that has had more than 750,000 takeoffs and landings during a calendar year; and~~

(ii) The sale of motor vehicles; or

(C) In a county in which a tax is levied and collected pursuant to Part 2 of Article 2A of this chapter;

(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the amount in excess of the initial 1 percent sales and use tax and in the event of a newly imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent sales and use tax;

(4) A sales and use tax levied under Article 4 of this chapter;

(5) A sales and use tax levied under Article 5 of this chapter; and

(6) A sales and use tax levied under Article 5A of this chapter.

If the imposition of any otherwise authorized local sales tax, local use tax, or local sales and use tax would result in a tax rate in excess of that authorized by this subsection, then such otherwise authorized tax may not be imposed.

(b) Reserved.

(c) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, the tax imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 shall not apply to:

~~(1) Reserved; and~~

~~(2) The sale of motor vehicles.~~

(c.1) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, on and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent.

(d) Notwithstanding any law or ordinance to the contrary, any tax, charge, or fee levied by any political subdivision of this state and applicable to mobile telecommunications services, as defined in Section 124(7) of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(7), shall apply only if the customer's place of primary use is

located within the boundaries of the political subdivision levying such local tax, charge, or fee. For purposes of this subsection, the provisions of Code Section 48-8-13 shall apply in the same manner and to the same extent as such provisions apply to the tax levied by Code Section 48-8-1 on mobile telecommunications services. This subsection shall not be construed to authorize the imposition of any tax, charge, or fee."

## SECTION 2-5.

Said chapter is further amended by revising Code Section 48-8-82, relating to authorization of counties and municipalities to impose joint sales and use tax, rate, and applicability to sales of motor fuels and food and beverages, as follows:

"48-8-82.

(a) When the imposition of a joint county and municipal sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax at the rate of 1 percent, except as provided in subsection (b) of this Code section. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article, except that the joint tax provided in this article shall be applicable to ~~sales~~:

(1) The sale of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale;

(2) The sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3; and

(3) The sale or use of jet fuel as such term is defined in Code Section 48-8-2 to the extent allowed pursuant to Code Section 48-8-3.5.

(b) On or after July 1, 2015, such joint sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than \$3.00 per gallon; provided, however, that in any consolidated government levying a joint sales and use tax at 2 percent pursuant to Code Section 48-8-96, on or after July 1, 2015, any such joint sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 2 percent of the retail sales price of the motor fuel which is not more than \$3.00 per gallon."

**SECTION 2-6.**

Said chapter is further amended in Code Section 48-8-241, relating to special districts and tax rate for the Special District Transportation Sales and Use Tax (TSPLOST), by revising subsection (d) as follows:

"(d) Except as otherwise provided in subsection (e) of this Code section, any tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, ~~except that~~ and a tax imposed under this article shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel ~~to or by a qualifying airline at a qualifying airport as such term is defined in Code Section 48-8-2 except to the extent allowed pursuant to Code Section 48-8-3.5;~~

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways. For purposes of this paragraph, a motor vehicle means a self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale; or

(5) Motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit.

The tax imposed pursuant to this article shall only be levied on the first \$5,000.00 of any transaction involving the sale or lease of a motor vehicle. The tax imposed pursuant to this article shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this article shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3."

**SECTION 2-7.**

Said chapter is further amended by revising Code Section 48-8-269, relating to exemption from taxation pursuant to the Special District Mass Transportation Sales and Use Tax, as follows:

"48-8-269.

(a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, ~~except that~~ and a tax imposed under this part shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel ~~to or by a qualifying airline at a qualifying airport as such term is defined in Code Section 48-8-2 except to the extent allowed pursuant to Code Section 48-8-3.5;~~

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale;

(5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit; or

(6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

(b) Except as otherwise specifically provided in this part, the tax imposed pursuant to this part shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this part shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3."

## SECTION 2-8.

Said chapter is further amended by revising Code Section 48-8-269.15, relating to a tax authorized to be imposed in Metropolitan County Special Districts, as follows:

"48-8-269.15.

(a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, ~~except that~~ and a tax imposed under this part shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel ~~to or by a qualifying airline at a qualifying airport as such term is defined in Code Section 48-8-2 except to the extent allowed pursuant to Code Section 48-8-3.5;~~

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale;

(5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit; or

(6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.



(b) Except as otherwise specifically provided in this part, the tax imposed pursuant to this part shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this part shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3."

## **SECTION 2-9.**

Said chapter is further amended by revising Code Section 48-8-269.30, relating to a tax authorized to be imposed in Metropolitan Municipality Special Districts, as follows:  
"48-8-269.30.

(a) Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, ~~except that~~ and a tax imposed under this part shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel ~~to or by a qualifying airline at a qualifying airport as such term is defined in Code Section 48-8-2 except to the extent allowed pursuant to Code Section 48-8-3.5;~~

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale;

(5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit; or

(6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

(b) Except as otherwise specifically provided in this part, the tax imposed pursuant to this part shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this part shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3."

## **PART III**

### **SECTION 3-1.**

(a) Except as otherwise provided in subsection (b) of this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Part II of this Act shall become effective December 1, 2018.

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**SECTION 3-2.**

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All laws and parts of laws in conflict with this Act are repealed.